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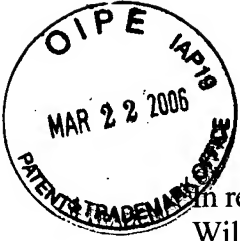
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**In re Application of:
William K. Bodin**

Serial No.: 10/047,123

Filed: January 15, 2002

Title: Ad Hoc Data Sharing in Virtual Team Rooms

Group Art Unit: 2143

2

§ Examiner: Lezak, Arrienne M.

§

§ Atty Docket No.: AUS920010779US1

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Lee Ann Carter

APPEAL BRIEF

Honorable Commissioner:

This is an Appeal Brief filed pursuant to 37 CFR § 41.37 in response to the Final Office Action of October 20, 2005, and pursuant to the Notice of Appeal filed January 20, 2006.

REAL PARTY IN INTEREST

The real party in interest in accordance with 37 CFR § 41.37(c)(1)(i) is the patent assignee, International Business Machines Corporation (“IBM”), a New York corporation having a place of business at Armonk, New York 10504.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences within the meaning of 37 CFR § 41.37(c)(1)(ii).

STATUS OF CLAIMS

Status of claims in accordance with 37 CFR § 41.37(c)(1)(iii): Fifty claims are filed in the original application in this case. Claims 1-50 are rejected in the Final Office Action. Claims 1-50 are on appeal.

STATUS OF AMENDMENTS

Status of amendments in accordance with 37 CFR § 41.37(c)(1)(iv): No amendments were submitted after final rejection. The claims as currently presented are included in the Appendix of Claims that accompanies this Appeal Brief.

SUMMARY OF CLAIMED SUBJECT MATTER

Applicant provides the following concise summary of the claimed subject matter according to 37 CFR § 41.37(c)(1)(v), including references to the specification by page and line number and to the drawings by reference characters.

Claim 1 claims:

1. A method of ad hoc data sharing, the method comprising the steps of:

creating at least one user record representing a user granted access to digital assets, wherein:
each user has a client device,

at least two of the client devices are wirelessly coupled for data communications to at least one computer, and
each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets;

receiving from client devices digital asset records representing digital assets, each digital asset record comprising:

at least one asset access permission field identifying a digital asset's asset access permission, and
a location field identifying the location of a digital asset;

retrieving digital assets in dependence upon the location fields in the digital asset records;

displaying the retrieved digital assets; and

editing one or more of the retrieved digital assets, wherein the editing is carried out in dependence upon user access privilege and in dependence upon asset access permission.

The means plus function claim elements permitted by 35 U.S.C. § 112, sixth paragraph, for independent claim 13 are identified as follows. Note the precise correspondence with the elements of claims 1 and 25:

13. A system for ad hoc data sharing, the system comprising:

means for creating at least one user record representing a user granted access to digital assets, wherein:
each user has a client device,
at least two of the client devices are wirelessly coupled for data communications to at least one computer, and

each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets;

means for receiving from client devices digital asset records representing digital assets, each digital asset record comprising:

at least one asset access permission field identifying a digital asset's asset access permission, and

a location field identifying the location of a digital asset;

means for retrieving digital assets in dependence upon the location fields in the digital asset records;

means for displaying the retrieved digital assets; and

means for editing one or more of the retrieved digital assets, wherein the editing is carried out in dependence upon user access privilege and in dependence upon asset access permission.

The means plus function claim elements permitted by 35 U.S.C. § 112, sixth paragraph, for independent claim 25 are identified as follows. Note the precise correspondence with the elements of claims 1 and 13:

25. A computer program product for ad hoc data sharing, the computer program product comprising:

a recording medium;

means, recorded on the recording medium, for creating at least one user record representing a user granted access to digital assets, wherein:
each user has a client device,

at least two of the client devices are wirelessly coupled for data communications to at least one computer, and
each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets;

means, recorded on the recording medium, for receiving from client devices digital asset records representing digital assets, each digital asset record comprising:

at least one asset access permission field identifying a digital asset's asset access permission, and

a location field identifying the location of a digital asset;

means, recorded on the recording medium, for retrieving digital assets in dependence upon the location fields in the digital asset records;

means, recorded on the recording medium, for displaying the retrieved digital assets; and

means, recorded on the recording medium, for editing one or more of the retrieved digital assets, wherein the editing is carried out in dependence upon user access privilege and in dependence upon asset access permission.

The portion of the original specification that is most pertinent to claim 1 of the present application is pages 16 – 18 and Figure 2. The subject matter of claim 1 is concisely summarized as follows with a description beginning at line 11 of page 16 in the original application and with reference numbers in parenthesis referencing Figure 2:

Turning now to Figure 2, typical embodiments of the invention are seen illustrated as methods of ad hoc data sharing for virtual team rooms.

Typical embodiments include creating (214) at least one user record (216)

in computer memory in a project computer (124), where each user record represents a user who is granted access to digital assets. In typical embodiments, each user has a client device (114), and at least two of the client devices are wirelessly coupled for data communications (112) to a project computer. Each user record typically comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets.

In typical embodiments of the kind illustrated in Figure 2, as will be explained in even more detail below in this specification, the user access privilege includes a 'read' privilege denoting the right to retrieve a digital asset from a location identified in a digital asset record, a 'write' privilege denoting a right to edit a digital asset, and an 'execute' privilege denoting a right to store a digital asset in a storage location other than the location identified in the digital asset record. In some embodiments, the client devices wirelessly coupled for data communications to the project computer typically include the client devices coupled for data communication wirelessly through a service gateway (116). In some embodiments, the client devices wirelessly coupled for data communications (112) to the project computer typically includes client devices coupled for data communications through a Bluetooth piconet. In other embodiments, the client devices wirelessly coupled for data communications (112) to the project computer include client devices coupled for data communications through 802.11(b) connections.

In typical embodiments of the kind illustrated in Figure 2, as again will be explained in even more detail below in this specification, each user record includes (as shown in user table (302) in Figure 3) a user identification field (303) identifying a user represented by a user record, and a user password (304). In typical embodiments each digital asset record includes (as shown in the digital asset table (402) in Figure 5) a digital asset

identification field (218), an owner identification field (451), and an asset relationship field (454) identifying relationships among digital assets.

Typical exemplary embodiments include receiving (222), in a project computer (124) from client devices (114), digital asset records (224) representing digital assets. In typical embodiments each digital asset record includes at least one asset access permission field (226) identifying a digital asset's asset access permission, and a location field (228) identifying the location of a digital asset. The location of a digital asset is typically implemented as a URL identifying a location, wherein the location is any storage location on any networked computer system anywhere in the world or in space. More specifically, although the URL identifying the location typically is implemented as a value of a field in a digital asset record, the location so identified is not in the digital asset record nor is it necessarily even in the client device that provided the digital asset record. It would be very common, for example, for the digital asset record to come to a project computer in a remote virtual team room from a user's client device that is the user's personal digital assistant when the digital asset identified by the digital asset record is physically located, and so located through a URL, on a document server in a corporate computer system, remote from the virtual team room, in a corporate office where the user is employed. The location of the digital asset is anywhere in cyberspace capable of identification in a URL, which is to say, more or less, anywhere in cyberspace, a very great range of locations indeed, a far greater range of locations that is available on any personal digital assistant or any portable computer.

Embodiments typically include retrieving (230), into a project computer (124), in dependence upon location fields (228) in digital asset records (224), digital assets (232), displaying (234) on at least one computer display device (238) of the project computer the retrieved digital assets

(232), where the computer display device is in view of at least two of the users, and editing (236), through the project computer (124), one or more of the retrieved digital assets (232), where the editing (236) is carried out in dependence upon user access privilege (220) and in dependence upon asset access permission (226).

Because claims 13 and 25 contain elements parallel to claim 1, the concise summary above of claim 1 is applicable also to claims 13 and 25. The acts described in this concise summary above of the method of claim 1 are also the acts corresponding to each claimed function in the means plus functions claimed in claims 13 and 25 according to 35 U.S.C. § 112, sixth paragraph.

Claim 37 claims:

37. A method of ad hoc data sharing for virtual team rooms, the method comprising the steps of:

creating at least one user record in computer memory in a project computer, wherein:

each user record represents a user who is granted access to digital assets,

each user has a client device,

at least two of the client devices are wirelessly coupled for data communications to the project computer, and

each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets;

receiving, in the project computer from client devices, digital asset records representing digital assets, each digital asset record comprising:

at least one asset access permission field identifying a digital asset's asset access permission, and

a location field identifying the location of a digital asset;

retrieving, into the project computer, in dependence upon the location fields in the digital asset records, digital assets;

displaying on at least one computer display device of the project computer the retrieved digital assets, wherein the computer display device is in view of at least two of the users; and

editing, through the project computer, one or more of the retrieved digital assets, wherein the editing is carried out in dependence upon user access privilege and in dependence upon asset access permission.

The portion of the original specification that is most pertinent to claim 37 of the present application is pages 16 – 18 and Figure 2. The concise summary above of claim 1 is applicable also to claim 37.

GROUND OF REJECTION

In accordance with 37 CFR § 41.37(c)(1)(vi), Applicant provides the following concise statement for each ground of rejection:

1. Whether claims 9, 10, 21, 22, 33, 34, 45, and 46 are unpatentable under 35 U.S.C § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.
2. Whether claims 1-50 are unpatentable under 35 U.S.C § 103(a) over Butler, *et al.* (U.S. Patent No. 6,584,493 B1) in view of Skinner, *et al.* (U.S. Patent No. 6,721,740 B1).

ARGUMENT

Applicant presents the following arguments pursuant to 37 CFR § 41.37(c)(1)(vii) regarding the two grounds of rejection in the present case.

**Argument Regarding The First Ground Of Rejection: Whether
Claims 9, 10, 21, 22, 33, 34, 45, and 46 Are Unpatentable
Under 35 U.S.C § 112, Second Paragraph, As Indefinite For
Failing To Particularly Point Out And Distinctly Claim
The Subject Matter Which Applicant Regards As The Invention**

Claims 1-9, 10, 21, 22, 33, 34, 45, and 46 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The Final Office Action at paragraph 1 states:

In particular, Examiner finds the wording “in near real time” to be indefinite. Proper amendment of the same is required. For purposes of Examination, “in near real time” will be interpreted to mean “immediately”.

Applicant respectfully traverses the rejection of claims 1-9, 10, 21, 22, 33, 34, 45, and 46 as indefinite. The Manual of Patent Examining Procedure (‘MPEP’) § 2173.02 sets forth the standard for compliance with 35 U.S.C. § 112 stating that “...the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent.” MPEP § 2173 further explains, “Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teaching of the prior art; and (C) The claim

interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.”

The phrase “near real time” specifically mentioned on page 2 of the Office Action does in fact properly satisfy the definiteness requirement of 35 U.S.C. § 112, second paragraph, when analyzed in light of the factors from MPEP § 2173 above. Under the first factor from MPEP § 2173, the definiteness of claim language must be analyzed in light of the content of the particular application disclosure, including the Applicant’s disclosure. Applicant has provided a 50 page specification including 6 pages of Figures to aid those skilled in the art in understanding Applicant’s claims. Moreover, Applicant has provided a definition of “near real time” at page 21, lines 25-27, of the specification stating:

In this specification, the term “near real time” means that an event occurs promptly, or almost immediately, from the perspective of a human being.

Furthermore, under the second factor from MPEP § 2173, the definiteness of claim language must be analyzed in light of the teaching of the prior art. A simple online search of the U.S. Patent and Trademark patent database identified 171 issued patents that use the terms “near real time,” “near real-time,” or “near realtime” in their claims., demonstrating that the term is not indefinite to those of skill in the art. In further demonstration of this point, Applicant notes that Newton’s Telecom Dictionary, 19th Edition, the 18th Edition of which is cited in the Office Action for other purposes, includes a definition of “near real time”, which states: “Near real-time Not quite in real-time, but nearly so.” In referencing these sources, Applicant does not seek to incorporate any definition from such sources; rather Applicant merely wishes to demonstrate that the term “near real time” is not indefinite to those of skill in the art.

Applicant also traverses the interpretation of “near real time” to mean “immediately” for purposes of examination. When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the Applicant’s invention and its relation to the prior art. *In re*

Zletz, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989). As previously stated, the specification of the present application includes a definition of “near real time” at page 21, line 25-27 which states:

In this specification, the term “near real time” means that an event occurs promptly, or almost immediately, from the perspective of a human being.

The proper interpretation of “near real time” for purposes of examination, under *In re Zletz*, therefore is that an event occurs promptly, or almost immediately, from the perspective of a human being.

In view of Applicant’s specification, the phrase “near real time” is sufficiently definite to apprise one of ordinary skill in the art of its scope as required by 35 U.S.C. § 112, second paragraph. Applicant therefore traverses the rejections individually to claims 9, 10, 21, 22, 33, 34, 45, and 46 under 35 U.S.C. § 112, second paragraph, and respectfully request the withdrawal of the rejections.

Argument Regarding The Second Ground Of Rejection: Whether
Claims 1-50 are unpatentable under 35 U.S.C § 103(a) over
Butler, et al. (U.S. Patent No. 6,584,493 B1) in view of
Skinner, et al. (U.S. Patent No. 6,721,740 B1)

Claims 1-50 stand rejected under 35 U.S.C § 103(a) as unpatentable over Butler (U.S. Patent No. 6,584,493 B1) in view of Skinner, et al. (U.S. Patent No. 6,721,740 B1). Applicant respectfully traverses each rejection. To establish a prima facie case of obviousness, three basic criteria must be met. MPEP § 2142. The first element of a prima facie case of obviousness under 35 U.S.C. § 103 is that the proposed combination of the references must teach or suggest all of Applicant’s claim limitations. *In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974). The second element of a prima facie case of obviousness under 35 U.S.C. § 103 is that there must be a suggestion or motivation to combine the references. *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438,

1442 (Fed. Cir. 1991). The third element of a prima facie case of obviousness under 35 U.S.C. § 103 is that there must be a reasonable expectation of success in the proposed combination of the references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986).

Butler in view of Skinner

Butler at column 1, lines 10-16, generally discloses a multiparty conferencing and collaboration tool utilizing a per-host model command, control and communication structure which also provides pre-meeting establishment and post-meeting maintenance of application sharing by a single user. Skinner at column 3, lines 55-56, generally discloses a method and apparatus of performing active update notification. The proposed combination of Butler in view of Skinner cannot establish a prima facie case of obviousness because the proposed combination does not teach or suggest each and every element of the claims of the present application, there is no suggestion or motivation to make the proposed combination, and there is no reasonable expectation of success in the proposed combination.

The Combination Of Butler in view of Skinner **Does Not Teach Or Suggest All Of Applicant's Claim Limitations**

Regarding independent claims 1, 13, 25, and 37, the Office Action states that Figures 2A-2C of Butler teach “each user has a client device....” What Figures 2A-2C of Butler actually teach according to column 23, lines 63-66, of Butler and column 24, lines 18-19, of Butler is an illustration of how the Butler “invention allocates system resources dynamically as the members require them, and then frees up those resources when they are no longer needed.” That is, Figures 2A-2C of Butler teach dynamic memory allocation among members in a multiparty conferencing and collaboration system. Nowhere in Figures 2A-2C does Butler teach or suggest “each user has a client device....” Butler’s illustration of dynamic resource allocation is not “each user has a client device....” as claimed in the present application.

The Office Action further states regarding claims 1, 13, 25, and 37 that column 5, lines 39-49, of Butler teach “receiving from client devices digital asset records representing digital assets....” What column 5, lines 39-49, of Butler actually teaches is “a new collaboration/control model for the application sharing protocol T.128....” Butler’s new collaboration/control model for the application sharing protocol T.128 concerns when and to whom relinquishment of shared application control occurs. Butler at column 5, lines 39-49, does not mention receiving from client devices digital asset records representing digital assets. Butler’s new collaboration/control model for the application sharing protocol T.128 is not receiving from client devices digital asset records representing digital assets as claimed in the present application.

Further regarding claims 1, 13, 25, and 37, the Office Action states that Figure 1 of Butler, column 8, lines 48-50, of Butler and column 9, lines 53-67 and column 10, lines 1-45, of Butler teach “displaying the retrieved digital assets....” What Figure 1 and column 8, lines 48-50, actually disclose is a “monitor 47 or other type of display device....” What column 9, line 53 through column 10 line 45, of Butler actually discloses is a series of recommendations for “Data protocols for multimedia conferencing....” Neither the monitor in Figure 1 and described in column 8, lines 48-50, of Butler nor the series of recommendations for multimedia conferencing protocols described in column 9, line 53 through column 10 line 45, of Butler mention “displaying the retrieved digital assets....” as claimed here. Butler’s monitor and series of recommendations for multimedia conferencing protocols are not displaying the retrieved digital assets as claimed in the present application.

Regarding independent claims 1, 13, 25, and 37, the Office Action at paragraph 6, states that column 16, lines 66-67, of Skinner, column 17, lines 1-28, of Skinner, and column 18, lines 45-48, of Skinner teach the following limitations from claims 1, 13, 25, and 37:

- creating at least one user record representing a user granted access to digital assets

- each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets
- at least one asset access permission field identifying a digital asset's asset access permission
- a location field identifying the location of a digital asset
- retrieving digital assets in dependence upon the location fields in the digital asset records
- wherein the editing is carried out in dependence upon user access privilege and independence upon asset access permission

What column 16, lines 66-67, and column 17, lines 1-28, of Skinner actually disclose is a general "permissions model for determining access permissions and change permissions for different clients or users." What column 18, lines 45-48, of Skinner actually discloses is that a "database server 311 may comprise a flat-file data management system, a relational database management system (RDBMS), and object-oriented database management system (ODBMS)..." Skinner therefore merely discloses the idea of a database with access permissions. Skinner does not disclose the variety of claim limitations included in independent claims 1, 13, 25, and 37. In fact, a text search of Skinner shows that Skinner never once mentions many of the limitations cited in the Office Action. For example, "user record," "location," "location field," "digital assets," "user access," "privilege field," "edit," and "editing" occur no where in the Skinner reference. To satisfy the prima facie case for obviousness, the Office Action must cite a combination of references that teaches all the Applicant's claim limitations. Skinner's general disclosure of a database with access permission discloses none of the following claim limitations as claimed in the present application:

- creating at least one user record representing a user granted access to digital assets
- each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital

assets

- at least one asset access permission field identifying a digital asset's asset access permission
- a location field identifying the location of a digital asset
- retrieving digital assets in dependence upon the location fields in the digital asset records
- wherein the editing is carried out in dependence upon user access privilege and independence upon asset access permission

Because the combination of references cited in the Office Action does not teach or suggest all the limitations of Applicant's claims, the requirements for a prima facie case of obviousness under 35 U.S.C. § 103(a) cannot be satisfied. Applicant respectfully traverses the rejection to independent claims 1, 13, 25, and 37 and requests withdrawal of the rejections.

No Suggestion or Motivation to Combine Butler and Skinner

To establish a prima facie case of obviousness, there must be a suggestion or motivation to combine Butler and Skinner. *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). The suggestion or motivation to combine Butler and Skinner must come from the teaching of either Butler or Skinner themselves, and the Examiner must explicitly point to the teaching within Butler or Skinner suggesting the proposed combination. Absent such a showing, the Examiner has impermissibly used "hindsight" occasioned by Applicant's own teaching to reject the claims. *In re Surko*, 11 F.3d 887, 42 U.S.P.Q.2d 1476 (Fed. Cir. 1997); *In re Vaeck*, 947 F.2d 488m 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re Gorman*, 933 F.2d 982, 986, 18 U.S.P.Q.2d 1885, 1888 (Fed. Cir. 1991); *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); *In re Laskowski*, 871 F.2d 115, 117, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989).

The Office Action asserts a rationale for motivation to combine Butler and Skinner at paragraph 7 stating:

It would have been obvious to one having ordinary skill in the art at the time the invention by Applicant to incorporate the permission and database functionalities of Skinner within the Butler structure as noted within Skinner which teaches enterprise applications....

In support of the Office Action's assertion that combining Butler and Skinner would have been obvious to one skilled in the art, the Office Action cites column 1, lines 47-64, of Skinner. What column 1, lines 47-64, of Skinner actually discloses is the desirability "that the effects of other users' modifications, as well as those modifications performed by the application itself (e.g., time-based changes), be made evident to each user in near real time." Skinner's specification further explains how the invention of Skinner satisfies this need by generally disclosing, at column 3, lines 55-56, a method and apparatus for performing active update notification. At no place cited in the Office Action does Skinner suggest a rationale to combine Skinner's method and apparatus of performing active update notification with Butler's multiparty conferencing and collaboration tool utilizing a per-host model command, control, and communication structure.

Moreover, no person of skill in the art would ever expect to find in either Butler or Skinner any hint of a suggestion to combine because the two references address inventions that are so different. Butler's invention of a multiparty conferencing and collaboration tool utilizing a per-host model is concerned with reducing network traffic, allowing greater scalability through dynamic system resource allocation, and allowing a single host to establish and maintain a share session with no other members present, as indicated in Butler's Abstract. Skinner's invention of performing active update notification, however, is concerned with maintaining a registry of interest objects to determine which clients or servers may be interested in changes to data objects, as indicated in Skinner's Abstract. No one would ever expect Butler or Skinner to suggest the combination of Butler and Skinner, nor would the idea of the combination ever occur to any person of skill in the art.

The references cited in the Office Action do not support the assertion that one skilled in the art would have been motivated to combine Butler and Skinner. Absent a showing from the references of a motivation to combine, the Office Action impermissibly displays hindsight occasioned by Applicant's own teaching to reject the claims. As such, the proposed combination of Butler and Skinner cannot establish a prima facie case of obviousness.

**No Reasonable Expectation of Success in the
Proposed Combination of Butler and Skinner**

To establish a prima facie case of obviousness, there must be a reasonable expectation of success in the proposed combination of Butler and Skinner. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986). The teachings of Butler and Skinner are not sufficient to render the claims prima facie obvious if the proposed combination of Butler and Skinner would change the principle of operation of either Butler or Skinner. *In re Ratti*, 270 F.2d 810, 813, 123 USPQ 349 (CCPA 1959).

There can be no reasonable expectation of success in a proposed combination of Butler's multiparty conferencing and collaboration tool utilizing a per-host model command, control, and communication structure with Skinner's method and apparatus of performing active update notification to produce ad hoc data sharing in virtual team rooms as claimed in the present application. On the contrary, Butler's multiparty conferencing and collaboration tool utilizing a per-host model command, control, and communication structure would clearly change the principle of Skinner's method and apparatus of performing active update notification. Butler at column 4, lines 43-49, clearly characterizes the principle of operation of the invention stating:

By implementing the per-host model whereby communication with and control of the host takes place in a private fashion between the host and a remote with periodic broadcast updates by the host to the entire share group, the total number of network messages which are required to be

transmitted between the members of the share group are greatly reduced.

Skinner beginning at column 3, line 7, clearly indicates the principle operation of the invention for a method of performing active update notification stating, "Update notifications are then sent only to the interested clients or servers." The principle of operation of Butler, providing private communication between the host and the remote with periodic broadcast updates by the host to the entire group, is changed completely, and in fact will not function at all, with the addition of Skinner's update notifications that are only sent to interested clients or servers. Said another way: Periodic broadcast updates to an entire group cannot function as such with update notifications sent only to interested clients or servers; the two principals are mutually exclusive. The proposed combination of Butler and Skinner therefore cannot possibly support a prima facie case of obviousness.

**The *Graham* Inquires Required For An Obviousness Rejection Have
Not Been Properly Considered, Determined, And Applied**

Establishing a prima facie case of obviousness for claims 1-50, which has not been accomplished, is not the end of obviousness analysis, it is the beginning. The rejection of claims 1-50 under 35 U.S.C. § 103 is deficient because the proper factual inquiries have not been considered, determined, and applied as required by the Supreme Court in *Graham v. John Deere*. The rejection should therefore be withdrawn and the case allowed.

The Manual of Patent Examining Procedure §2141 states:

Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case. The Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

Under Section 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy. . .

This is not to say, however, that there will not be difficulties in applying the nonobviousness test. What is obvious is not a question upon which there is likely to be uniformity of thought in every given factual context. The difficulties, however, are comparable to those encountered daily by the courts in such frames of reference as negligence and scienter, and should be amenable to a case-by-case development. We believe that strict observance of the requirements laid down here will result in that uniformity and definitiveness which Congress called for in the 1952 Act.

Office policy has consistently been to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. As quoted above, the four factual inquiries enunciated therein as a background for determining obviousness are briefly as follows:

(A) Determining of the scope and contents of the prior art;

(B) Ascertaining the differences between the prior art and the claims in issue;

(C) Resolving the level of ordinary skill in the pertinent art; and

(D) Evaluating evidence of secondary considerations.

The present case contains no evidence of secondary considerations, and, although the office actions in this case make no express mention of determining the scope and contents of the prior art, nevertheless, their discussion of Butler and Skinner amount in effect to a kind of determination of the scope and content of the prior art. The office actions in this case, however, fail to ascertain the differences between the prior art and the claims in issue and fail to resolve the level of ordinary skill in the pertinent art.

**The Office Action Does Not Ascertain The Differences
Between The Prior Art And The Claims In Issue**

The first factual inquiry that has not been properly considered and determined is ascertaining the differences between the prior art and the claims in issue. More particularly, in each office action, the Examiner has only identified elements in Applicant's claims not found in Butler and then attempted to find a similar element in Skinner to support an obviousness rejection. Such analysis is improper and incomplete. "Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references as a whole." MPEP §2141.02. Furthermore, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *Id.*, citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983). The Office Actions of April 25, 2005, and October 20, 2005 are deficient because the Examiner has only identified differences between certain elements

of Applicant's claims and Butler. This analysis is improper and incomplete because Examiner has not determined whether Applicant's claims as a whole would have been obvious in view of the modification of Butler according to Skinner and why the claims as a whole would have been obvious. As such, the obviousness rejections should be withdrawn and the case should be allowed.

**The Office Action Does Not Resolve The
Level Of Ordinary Skill In The Pertinent Art**

The second factual inquiry that has not been properly considered, determined, and applied is resolving the level of ordinary skill in the pertinent art. "The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry." MPEP §2141.03 citing *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718, 21 USPQ2d 1053, 1057 (Fed. Cir. 1991). "The examiner must ascertain what would have been obvious to one of ordinary skill in the art at the time the invention was made, and not to the inventor, a judge, a layman, those skilled in remote arts, or to geniuses in the art at hand." *Id.* citing *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 218 USPQ 865 (Fed. Cir. 1983), cert. denied, 464 U.S. 1043 (1984). "Factors that may be considered in determining level of ordinary skill in the art include (1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field." *Id.* citing *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696, 218 USPQ 865, 868 (Fed. Cir. 1983), cert. denied, 464 U.S. 1043 (1984). The Office Actions of April 25, 2005, and October 20, 2005, fail to apply a single factor used to determine the level of ordinary skill in the art. In fact, in over four years of prosecution and in two Office Actions, no analysis at all considering the level of one of ordinary skill in the art for the instant case has been performed. The rejection of claims 1-50 is therefore deficient and the case should be allowed.

Relations Among Claims

Claims 2-12, 14-24, 26-36, and 38-50 depend respectively from independent claims 1, 13, 25, and 37. Each dependent claim includes all of the limitations of the independent claim from which it depends. Because the combination of Butler and Skinner does not teach or suggest each and every element of the independent claims and no other references refer to the elements of the independent claims, no proposed combination of references can possibly teach or suggest each and every element of any dependent claim. The rejections of dependent claims 2-12, 14-24, 26-36, and 38-50 therefore should be withdrawn, and these claims also should be allowed.

Conclusion

Claims 9, 10, 21, 22, 33, 34, 45, and 46 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regard as the invention. Applicant respectfully points out that Applicant's claims are sufficiently definite to apprise one of ordinary skill in the art of the scope of the claims as required under 35 U.S.C. § 112, second paragraph. Claims 9, 10, 21, 22, 33, 34, 45, and 46 are therefore patentable and should be allowed. Applicant respectfully traverses each rejection individually and requests reconsideration of claims 9, 10, 21, 22, 33, 34, 45, and 46.

Claims 1-50 stand rejected under 35 U.S.C § 103(a) as unpatentable over Butler (U.S. Patent No. 6,584,493 B1) in view of Skinner, et al. (U.S. Patent No. 6,721,740 B1). Applicant respectfully traverses each rejection. The proposed combination of Butler in view of Skinner cannot establish a prima facie case of obviousness because the proposed combination does not teach or suggest each and every element of the claims of the present application, there is no suggestion or motivation to make the proposed combination, and there is no reasonable expectation of success in the proposed combination. Claims 1-50 are therefore patentable and should be allowed. Applicant respectfully traverses each rejection individually and requests reconsideration of claims

1-50.

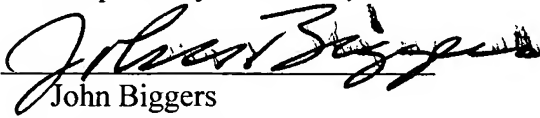
In view of the forgoing arguments, reversal on all grounds of rejection is requested.

The Commissioner is hereby authorized to charge or credit Deposit Account No. 09-0447 for any fees required or overpaid.

Date: March 20, 2006

Respectfully submitted,

By:



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APPENDIX OF CLAIMS
ON APPEAL IN PATENT APPLICATION OF
WILLIAM K. BODIN, *ET AL.*, SERIAL NO. 10/47,123

CLAIMS

What is claimed is:

1. A method of ad hoc data sharing, the method comprising the steps of:

creating at least one user record representing a user granted access to digital assets, wherein:

each user has a client device,

at least two of the client devices are wirelessly coupled for data communications to at least one computer, and

each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets;

receiving from client devices digital asset records representing digital assets, each digital asset record comprising:

at least one asset access permission field identifying a digital asset's asset access permission, and

a location field identifying the location of a digital asset;

retrieving digital assets in dependence upon the location fields in the digital asset records;

displaying the retrieved digital assets; and

editing one or more of the retrieved digital assets, wherein the editing is carried out in dependence upon user access privilege and in dependence upon asset access permission.

2. The method of claim 1 further comprising creating a group table, wherein the group table comprises at least one group record, the group record representing a user group, the group record comprising a group access privilege field and a foreign key field, wherein the foreign key field identifies a one-to-many relationship between the group table and one or more related user records in the user table, wherein the group access privilege field identifies access privileges for users represented by the related user records.
3. The method of claim 1 wherein the user access privilege comprises:

a 'read' privilege denoting the right to retrieve a digital asset from a location identified in a digital asset record,

a 'write' privilege denoting a right to edit a digital asset, and

an 'execute' privilege denoting a right to store a digital asset in a storage location other than the location identified in the digital asset record.

4. The method of claim 1 wherein the client devices wirelessly coupled for data communications to the computer further comprise the client devices coupled for data communication wirelessly through a service gateway.
5. The method of claim 1 wherein the client devices wirelessly coupled for data communications to the computer comprises client devices coupled for data communications through a Bluetooth piconet.
6. The method of claim 1 wherein the client devices wirelessly coupled for data communications to the computer comprises client devices coupled for data communications through 802.11(b) connections.
7. The method of claim 1 wherein each user record further comprises:
a user identification field identifying a user represented by a user record, and
a user password.
8. The method of claim 1 wherein each digital asset record further comprises:
a digital asset identification field,
an owner identification field, and

an asset relationship field identifying relationships among digital assets.

9. The method of claim 1 further comprising:

receiving from a first client device a first digital asset record representing a first digital asset, the first digital asset record comprising a first asset access permission field identifying a first asset access permission; and

receiving from the first client device a second digital asset record representing the first digital asset, the second digital asset record comprising the first asset access permission field identifying a second asset access permission;

replacing, promptly after receiving the second digital asset record, the first digital asset record with the second digital asset record;

whereby the asset access permission for the digital asset is changed in near real time from the first asset access permission to the second asset access permission.

10. The method of claim 1 further comprising editing a user access privilege field in a user record, whereby a user's user access privilege is changed in near real time.
11. The method of claim 1 wherein the computer is located in a first physical location, wherein the client devices wirelessly coupled for data communications

to the computer further comprise at least one of the client devices, located in a second physical location, wirelessly coupled for data communications through a second service gateway in the second physical location across an internet to a first service gateway located in the first physical location with the computer.

12. The method of claim 1 wherein the steps of creating a user group table and receiving digital asset records are carried out upon a staging computer and the steps of retrieving, displaying, and editing are carried out upon a project computer, the method comprising the further step of displaying on at least one computer display device of the staging computer the retrieved digital assets in their unedited form.
13. A system for ad hoc data sharing, the system comprising:

means for creating at least one user record representing a user granted access to digital assets, wherein:

each user has a client device,

at least two of the client devices are wirelessly coupled for data communications to at least one computer, and

each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets;

means for receiving from client devices digital asset records representing digital assets, each digital asset record comprising:

at least one asset access permission field identifying a digital asset's asset access permission, and

a location field identifying the location of a digital asset;

means for retrieving digital assets in dependence upon the location fields in the digital asset records;

means for displaying the retrieved digital assets; and

means for editing one or more of the retrieved digital assets, wherein the editing is carried out in dependence upon user access privilege and in dependence upon asset access permission.

14. The system of claim 13 further comprising means for creating a group table, wherein the group table comprises at least one group record, the group record representing a user group, the group record comprising a group access privilege field and a foreign key field, wherein the foreign key field identifies a one-to-many relationship between the group table and one or more related user records in the user table, wherein the group access privilege field identifies access privileges for users represented by the related user records.

15. The system of claim 13 wherein the user access privilege comprises:

a 'read' privilege denoting the right to retrieve a digital asset from a location identified in a digital asset record,

a 'write' privilege denoting a right to edit a digital asset, and

an 'execute' privilege denoting a right to store a digital asset in a storage location other than the location identified in the digital asset record.
16. The system of claim 13 wherein the client devices wirelessly coupled for data communications to the computer further comprise the client devices coupled for data communication wirelessly through a service gateway.
17. The system of claim 13 wherein the client devices wirelessly coupled for data communications to the computer comprises client devices coupled for data communications through a Bluetooth piconet.
18. The system of claim 13 wherein the client devices wirelessly coupled for data communications to the computer comprises client devices coupled for data communications through 802.11(b) connections.
19. The system of claim 13 wherein each user record further comprises:

a user identification field identifying a user represented by a user record, and
a user password.

20. The system of claim 13 wherein each digital asset record further comprises:

a digital asset identification field,

an owner identification field, and

an asset relationship field identifying relationships among digital assets.

21. The system of claim 13 further comprising:

means for receiving from a first client device a first digital asset record
representing a first digital asset, the first digital asset record comprising a first
asset access permission field identifying a first asset access permission; and

means for receiving from the first client device a second digital asset record
representing the first digital asset, the second digital asset record comprising the
first asset access permission field identifying a second asset access permission;

means for replacing, promptly after receiving the second digital asset record, the
first digital asset record with the second digital asset record;

whereby the asset access permission for the digital asset is changed in near real
time from the first asset access permission to the second asset access permission.

22. The system of claim 13 further comprising means for editing a user access privilege field in a user record, whereby a user's user access privilege is changed in near real time.
23. The system of claim 13 wherein the computer is located in a first physical location, wherein the client devices wirelessly coupled for data communications to the computer further comprise at least one of the client devices, located in a second physical location, wirelessly coupled for data communications through a second service gateway in the second physical location across an internet to a first service gateway located in the first physical location with the computer.
24. The system of claim 13 wherein the means for creating a user group table and means for receiving digital asset records are carried out upon a staging computer and the means for retrieving, displaying, and editing are carried out upon a project computer, the system comprising the means for displaying on at least one computer display device of the staging computer the retrieved digital assets in their unedited form.
25. A computer program product for ad hoc data sharing, the computer program product comprising:

a recording medium;

means, recorded on the recording medium, for creating at least one user record representing a user granted access to digital assets, wherein:

each user has a client device,

at least two of the client devices are wirelessly coupled for data communications to at least one computer, and

each user record comprises a user access privilege field identifying for each user that user's user access privilege for access to digital assets;

means, recorded on the recording medium, for receiving from client devices digital asset records representing digital assets, each digital asset record comprising:

at least one asset access permission field identifying a digital asset's asset access permission, and

a location field identifying the location of a digital asset;

means, recorded on the recording medium, for retrieving digital assets in dependence upon the location fields in the digital asset records;

means, recorded on the recording medium, for displaying the retrieved digital assets; and

means, recorded on the recording medium, for editing one or more of the retrieved digital assets, wherein the editing is carried out in dependence upon user access privilege and in dependence upon asset access permission.

26. The computer program product of claim 25 further comprising means, recorded on the recording medium, for creating a group table, wherein the group table comprises at least one group record, the group record representing a user group, the group record comprising a group access privilege field and a foreign key field, wherein the foreign key field identifies a one-to-many relationship between the group table and one or more related user records in the user table, wherein the group access privilege field identifies access privileges for users represented by the related user records.
27. The computer program product of claim 25 wherein the user access privilege comprises:
- a 'read' privilege denoting the right to retrieve a digital asset from a location identified in a digital asset record,
- a 'write' privilege denoting a right to edit a digital asset, and
- an 'execute' privilege denoting a right to store a digital asset in a storage location other than the location identified in the digital asset record.

28. The computer program product of claim 25 wherein the client devices wirelessly coupled for data communications to the computer further comprise the client devices coupled for data communication wirelessly through a service gateway.
29. The computer program product of claim 25 wherein the client devices wirelessly coupled for data communications to the computer comprises client devices coupled for data communications through a Bluetooth piconet.
30. The computer program product of claim 25 wherein the client devices wirelessly coupled for data communications to the computer comprises client devices coupled for data communications through 802.11(b) connections.
31. The computer program product of claim 25 wherein each user record further comprises:

a user identification field identifying a user represented by a user record, and

a user password.
32. The computer program product of claim 25 wherein each digital asset record further comprises:

a digital asset identification field,

an owner identification field, and

an asset relationship field identifying relationships among digital assets.

33. The computer program product of claim 25 further comprising:

means, recorded on the recording medium, for receiving from a first client device a first digital asset record representing a first digital asset, the first digital asset record comprising a first asset access permission field identifying a first asset access permission; and

means, recorded on the recording medium, for receiving from the first client device a second digital asset record representing the first digital asset, the second digital asset record comprising the first asset access permission field identifying a second asset access permission;

means, recorded on the recording medium, for replacing, promptly after receiving the second digital asset record, the first digital asset record with the second digital asset record;

whereby the asset access permission for the digital asset is changed in near real time from the first asset access permission to the second asset access permission.

34. The computer program product of claim 25 further comprising means, recorded on the recording medium, for editing a user access privilege field in a user record, whereby a user's user access privilege is changed in near real time.

35. The computer program product of claim 25 wherein the computer is located in a first physical location, wherein the client devices wirelessly coupled for data communications to the computer further comprise at least one of the client devices, located in a second physical location, wirelessly coupled for data communications through a second service gateway in the second physical location across an internet to a first service gateway located in the first physical location with the computer.
36. The computer program product of claim 25 wherein the means, recorded on the recording medium, for creating a user group table and means, recorded on the recording medium, for receiving digital asset records are carried out upon a staging computer and the means, recorded on the recording medium, for retrieving, displaying, and editing are carried out upon a project computer, the computer program product comprising the means, recorded on the recording medium, for displaying on at least one computer display device of the staging computer the retrieved digital assets in their unedited form.
37. A method of ad hoc data sharing for virtual team rooms, the method comprising the steps of:
- creating at least one user record in computer memory in a project computer, wherein:

each user record represents a user who is granted access to digital assets,
each user has a client device,
at least two of the client devices are wirelessly coupled for data communications
to the project computer, and
each user record comprises a user access privilege field identifying for each user
that user's user access privilege for access to digital assets;

receiving, in the project computer from client devices, digital asset records
representing digital assets, each digital asset record comprising:
at least one asset access permission field identifying a digital asset's asset access
permission, and
a location field identifying the location of a digital asset;

retrieving, into the project computer, in dependence upon the location fields in the
digital asset records, digital assets;

displaying on at least one computer display device of the project computer the
retrieved digital assets, wherein the computer display device is in view of at least
two of the users; and

editing, through the project computer, one or more of the retrieved digital assets,
wherein the editing is carried out in dependence upon user access privilege and in
dependence upon asset access permission.

38. The method of claim 37 further comprising creating, wherein the group table comprises at least one group record, the group record representing a user group, the group record comprising a group access privilege field and a foreign key field, wherein the foreign key field identifies a one-to-many relationship between the group table and one or more related user records in the user table, wherein the group access privilege field identifies access privileges for users represented by the related user records.
39. The method of claim 37 wherein the user access privilege comprises:
- a 'read' privilege denoting the right to retrieve a digital asset from a location identified in a digital asset record,
- a 'write' privilege denoting a right to edit a digital asset, and
- an 'execute' privilege denoting a right to store a digital asset in a storage location other than the location identified in the digital asset record.
40. The method of claim 37 wherein the client devices wirelessly coupled for data communications to the project computer further comprise the client devices coupled for data communication wirelessly through a service gateway.

41. The method of claim 37 wherein the client devices wirelessly coupled for data communications to the project computer comprises client devices coupled for data communications through a Bluetooth piconet.
42. The method of claim 37 wherein the client devices wirelessly coupled for data communications to the project computer comprises client devices coupled for data communications through 802.11(b) connections.
43. The method of claim 37 wherein each user record further comprises:
a user identification field identifying a user represented by a user record, and
a user password.
44. The method of claim 37 wherein each digital asset record further comprises:
a digital asset identification field,
an owner identification field, and
an asset relationship field identifying relationships among digital assets.
45. The method of claim 37 further comprising:

receiving from a first client device a first digital asset record representing a first digital asset, the first digital asset record comprising a first asset access permission field identifying a first asset access permission; and

receiving from the first client device a second digital asset record representing the first digital asset, the second digital asset record comprising the first asset access permission field identifying a second asset access permission;

replacing, promptly after receiving the second digital asset record, the first digital asset record with the second digital asset record;

whereby the asset access permission for the digital asset is changed in near real time from the first asset access permission to the second asset access permission.

46. The method of claim 37 further comprising editing a user access privilege field in a user record, whereby a user's user access privilege is changed in near real time.
47. The method of claim 37 wherein the project computer is located in a first physical location, wherein the client devices wirelessly coupled for data communications to the project computer further comprise at least one of the client devices, located in a second physical location, wirelessly coupled for data communications through a second service gateway in the second physical location across an internet to a first service gateway located in the first physical location with the project computer.

48. The method of claim 37 wherein the steps of creating a user group table and receiving digital asset records are carried out upon a staging computer and the steps of retrieving, displaying, and editing are carried out upon the project computer, the method comprising the further step of displaying on at least one computer display device of the staging computer the retrieved digital assets in their original and unedited form, wherein the computer display device of the second computer is in view of at least two of the users.
49. The method of claim 48 wherein the computer display devices comprise projectors and projection screens.
50. The method of claim 48 wherein the computer display devices comprise video displays.

**APPENDIX OF EVIDENCE
ON APPEAL IN PATENT APPLICATION OF
WILLIAM K. BODIN, *ET AL.*, SERIAL NO. 10/047,123**

This is an evidence appendix in accordance with 37 CFR § 41.37(c)(1)(ix).

There is in this case no evidence submitted pursuant to 37 CFR §§ 1.130, 1.131, or 1.132, nor is there in this case any other evidence entered by the examiner and relied upon by the appellants.

RELATED PROCEEDINGS APPENDIX

This is a related proceedings appendix in accordance with 37 CFR § 41.37(c)(1)(x).

There are no decisions rendered by a court or the Board in any proceeding identified pursuant to 37 CFR § 41.37(c)(1)(ii).